

# Nick Ellis

## **PARTNER**

### **ROCKY MOUNT, NC**

t: 252.972.7115

f: 252.972.7045

### **RALEIGH, NC**

t: 919.783.2907

f: 919.783.1075

Nick represents businesses, governmental agencies, and individuals needing someone to advocate their position in civil litigation. Clients bank on his 36+ years of experience to present their case to judges and juries in North Carolina's federal and state courts.



## **OFFICE LOCATIONS**

1151 Falls Road, Suite 1000  
Rocky Mount, NC 27804

301 Fayetteville St., Suite 1900  
Raleigh, NC 27601

P.O. Box 1801  
Raleigh, NC 27602

## **JURISDICTIONS LICENSED**

North Carolina, US Court of Appeals for the  
Fourth Circuit

## **BIOGRAPHY**

Nick has been trying cases in the state and federal courts of North Carolina since 1987. Nick's clients have relied on him in cases involving contract and real estate disputes, use of force claims against law enforcement agencies, negligence claims, and wills and trusts disputes. Generally, Nick's clients are the targets of lawsuits, but he also represents clients who are compelled to go to court to prosecute their cases.

## **AREAS OF FOCUS**

## LITIGATION

*Arnesen, et. al. vs. Rivers Edge Country Club, Inc., BB&T, et al.* (No. 375A-14, North Carolina Supreme Court, December 18, 2015) – The N.C. Supreme Court issued opinion in which it dismissed claims filed by property owners against a developer and BB&T, who were seeking damages in excess of \$90,000,000, which was represented by Poyner Spruill. The majority opinion was written by Justice Paul Newby. The Supreme Court summarizing Plaintiffs' claim, which was essentially that they would not have purchased certain real property but for faulty appraisal information, which BB&T should have discovered and disclosed to them. The complaint revealed plaintiffs did not view, receive, order or inquire in any way about the appraisals before purchasing the property nor were the contracts they signed to buy the property contingent upon any appraisal. The court found no legal duty exists at law between a debtor and creditor or between a bank's appraiser and a purchaser; and as such, the Plaintiffs' claims failed. Plaintiffs further failed to sufficiently allege justifiable reliance upon the alleged faulty appraisal information, or lack thereof, or that their injuries were proximately caused by either BB&T or the appraisers and therefore the NC Business Court's dismissal of this case was affirmed. Importantly, the majority held the plaintiffs were "investors" and so the Mortgage Lending Act (MLA) did not apply to these transactions. The case is very helpful for financial institutions because it confirms the extremely high pleading threshold Plaintiffs face in order to survive a Motion to Dismiss on such claims. More importantly, it recognized the true nature of Plaintiffs as "investors" and as such, the provisions of the MLA are not applicable in such transactions. Finally, it establishes the need for Plaintiffs to rely on the information in order to establish proximate cause.

*Caleb Wardrett v. City of Rocky Mount Police Department, Det. Clifton and Det. Denotter* (United States District Court for the Eastern District of North Carolina, 2016) – The federal court granted summary judgment for the City of Rocky Mount, its Police Department and detectives in a case brought against them under 42 USC Â§ 1983 where claims were asserted for malicious prosecution and false arrest. The police detectives conducted interviews of witnesses who had information concerning an attempted homicide that took place in Rocky Mount. As a result of that investigation, the plaintiff was charged with attempted murder. The detectives believed they had probable cause to have an arrest warrant issued. This belief was supported by the fact that the local magistrate found probable cause existed and issued the warrant. However, at a subsequent state court probable cause hearing, several witnesses failed to appear or changed their accounts of what happened, which led to the charges being dismissed.

*Eugene Dunston v. Wake County Sheriff Donnie Harrison, et al;* (United States District Court for the Eastern District of North Carolina, 2015) – After an eight day jury trial a 12-member jury issued a complete defense verdict for the Sheriff of Wake County and three of his detention officers. Plaintiff, a detainee in the jail, claimed the officers used excessive force against him on three separate occasions and sued them for violating his Constitutional rights under 42 U.S.C. 1983. He also made claims for battery, negligence, and made a claim against the Sheriff for negligent supervision. Video captured two of these incidents. The case was hotly contested as to all issues and included an intermediate appeal to the United States Court of Appeals for the 4th Circuit to address the defense of qualified immunity for the defendants. At trial, both parties presented evidence by fact and expert witness. Video of the jail and the incidents was presented, which was closely analyzed by the jury. The plaintiff made a pre-trial settlement demand of \$225,000, but claimed to have over \$400,000 in attorney’s fees, which can be awarded in 1983 cases. The trial court granted the officers a directed verdict as to the claims against them for negligence. And, after deliberating for five hours, the jury rendered a verdict absolving each defendant as to each of the remaining claims. The negligent supervision claim, which had been bifurcated, was dismissed by the trial judge. This was reportedly the first jury trial against Wake County or the Sheriff in over 20 years. Nick and Caroline Mackie were able to defend these law enforcement officers in a time where their actions are being closely scrutinized by the public and the media.

*Gethers v. Wake County Sheriff Donnie Harrison, et al;* (United States District Court for the Eastern District of North Carolina, 2014) – Represented defendants in a claim by the estate of a detainee for wrongful death when he committed suicide in the Wake County jail. Estate made claims under 42 USC Â§ 1983 and under state law. Detention officers had twice placed the detainee on suicide watch, but both times he was removed from suicide watch after being independently evaluated by a psychiatrist. Summary judgment was granted in favor of the Sheriff’s Office as to all claims. The federal claims were for alleged deliberate indifference to the detainee’s condition and that there was inadequate training for the detention officers in treating suicidal detainees. The United States District Court Judge dismissed the deliberate indifference claim because there was no evidence the guards actually knew of a serious medical condition that they deliberately disregarded. Further, the training claim was dismissed because “The inadequacy of police training may serve as a basis for Â§ 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.”

*Mancuso, et al. v. Burton Farm Development Company and Boddie-Noell Enterprises, Inc.*, (North Carolina Court of Appeals, 9/17/2013), – In a published opinion, the NC Court of Appeals unanimously affirmed a summary judgment for the developer of a 900 acre real estate project on the coast of North Carolina, who was accused of breaching a contract, committing fraud and violating NC’s Unfair Trade Act because it did not build a proposed marina. The appellate court issued its ruling on September 17, 2013 affirming the trial court that found the defendants, Poyner Spruill’s clients, did not have an implied contractual duty to build a 400 slip marina at Burton Farm’s development, Arlington Place, located in Pamlico County. The plaintiffs bought five lots (total sales price near \$460,000) in late 2006 for investment purposes. They claimed they bought the lots because the developer’s advertising material and its agents all represented to them that a deep-water, inland marina would be constructed. When it did not get built, the plaintiffs sued for breach of implied contract, fraud, Unfair Trade violations and asked the court to find the member of Burton Farm, an LLC, was the “alter ego” of the LLC and therefore, liable in its own name. The trial court granted the defendants summary judgment. The Court of Appeals affirmed this because the parol evidence rule and Statute of Frauds governed the sale of real estate and the sales contracts. Essentially, the terms of the written contract could not be contradicted by the plaintiffs’ allegations about things they may have been told or advertising they reviewed before they signed the purchase contracts. The developer had numerous disclaimers in its marketing material that the marina may not be built for a variety of factors, including CAMA permitting issues and market conditions. The court found these disclaimers complied with the requirements of the Interstate Land Sales Act, so there was no basis for a claim under this federal law, either. The application of this “Black Letter Law” turned out to be the foundation of the court’s ruling that resulted in the dismissal of the plaintiff’s lawsuit. And, the appellate court applied this same ruling to uphold the dismissal of three companion cases that other plaintiffs had filed involving the sale of seven lots (total sales price over \$1,000,000).

*Jonathan White, et al. v. Burton Farm Development Company and Boddie-Noell Enterprises, Inc.* (North Carolina Court of Appeals, 9/17/2013)

*Waterway Drive POA v. Town of Cedar Point* (Carteret County Superior Court, 2012) – Represented 20+ landowners and POA in dispute with municipality over whether a road depicted on a 1936 plat was public or private. The road fronted the Intercostal Waterway and so potential diminution of value to the clients’ property was substantial if the road was declared to be public. After extensive discovery of city officials and landowners, the trial court granted summary judgment to the POA and declared the road was private. North Carolina Court of Appeals affirmed summary judgment.

*James Garrett v. Randy Parton, et al* (2009 – NC Business Court) – We represented country music entertainer Randy Parton in a taxpayer derivative action in which Plaintiff sought to recover more than \$15 million for an alleged fraud and conspiracy surrounding the construction and operation of “The Randy Parton Theatre”, a Branson, MO-style theater in Roanoke Rapids, NC. The case was filed by the NC Institute for Constitutional Law. We were able to get the case dismissed in its entirety by establishing the plaintiff did not have standing to bring these claims as an individual taxpayer or through a taxpayer derivative theory.

*USA vs. Moorman Pine Plantations, L.L.C.* (US District Court, July 2008)

*State of North Carolina v. Trevally, Inc.* (NC Ct. of Apps.; 655 S.E.2d 446, 2008) – Client, an AZ corporation, was sued by NC to recover \$250,000 transferred to it by a NC corporation. Trial court dismissed complaint because client was not within the NC’s court’s jurisdiction. Court of Appeals affirmed in holding that addressed corporate “alter ego” issues and minimum contacts requirement of NC’s “long-arm” statute.

(2004 – NC Court of Appeals) – Action for defective construction of million dollar beach home at the Outer Banks was dismissed when we established the statute of limitations and statute of repose barred the claim. Court of Appeals affirmed trial court’s ruling. *Wood v. BD&A Construction* (2004 – NC Court of Appeals) – Action for defective construction of million dollar beach home at the Outer Banks was dismissed when we established the statute of limitations and statute of repose barred the claim.

*Depalma* (No. 03 CVS 7487, NC Court of Appeals, Dec. 2004) – Represented Catholic Diocese and high school in suit alleging student injured in football game due to school’s negligence. Suit dismissed by trial court for statute of limitations defense. Affirmed by Court of Appeals.

*Currituck Associates v. Hollowell* (NO. COA03-1082, NC Court of Appeals, Sept. 2004) – Parties’ settlement agreement based on emails enforced by trial court. Court of Appeals affirmed ruling in a case of first impression.

*Greene, Admin. for Medlin v. Garner* (NO. COA03-196, NC Court of Appeals, March 2004) – Represented landlocked property owner in obtaining a permanent cart way through summary judgment. Court of Appeals affirmed ruling and noted clear establishment of facts by client.

*Carroll v. Strickland* (No. 01 CVS 1482, NC Court of Appeals, Aug. 2004) – In representing defendant sued for emotional distress cause by workplace “fake pipe-bomb”, we had case dismissed at summary judgment because plaintiff’s expert could not link emotional distress to incident.

## **BUSINESS LITIGATION**

- Nick served as co-lead counsel for a national financial institution that was sued in a quasi-class action suit by lot owners in a failed real estate development. The firm got the suit dismissed and this ruling was affirmed by the N.C. Supreme Court in an opinion that recognized the limited duty owed by a lender to a borrower.
- Nick was lead counsel to a developer of a 900 acre subdivision that was sued by lot owners claiming contractual breaches when a marina was not built. Nick got the suit dismissed and this was affirmed by the NC Court of Appeals.
- Nick served as lead counsel for a national entertainment facilities management company in the NC Business Court in a governmental contract bidding case. After the court denied the opposing party’s Preliminary Injunction motion, the case was resolved.
- A firm client sold its business and then was sued by the buyer for fraud and breach of representations and warranties. Nick successfully argued for a dismissal of the fraud claim and then the parties were able to settle the case.

## **ADMINISTRATIVE EMPLOYMENT LAW**

Nick represents parties being sued for liability concerning their rendering of professional services. These cases involve claims of legal and real estate malpractice. Nick has been able to have such claims dismissed by the court and also had complaints with the NC Real Estate Commission terminate without any repercussions to the agent.

## **TORT & INSURANCE DEFENSE**

- Has represented defendants in both federal and state courts since 1987 in cases concerning individuals and companies involved in incidents resulting in death, bodily injury, or significant property damage
- Has been lead counsel in over 80 jury trials in federal and state courts in cases dealing with a broad range of issues, such as use of force by law enforcement officers, wrongful death claims involving motor vehicles and migrant laborers, livestock liability, eminent domain by local governments and construction cases
- Served as past-president of the NC Association of Defense Attorneys, the American Board of Trial Advocates (Eastern NC Chapter), and the Eastern NC Inn of Court

## **GOVERNMENT**

- Represents municipal police departments and county sheriff's offices with excessive force and law enforcement officer misconduct claims, as well as claims involving medical care and detainee supervision in detention centers
- Assists local governments with various tort claims and litigation involving constitutional challenges to local ordinances. Recent cases involved the successful defense to a constitutional challenge of a city's adult club ordinance and affirmation of a county's decision to remove a long-standing Confederate monument.
- Represents several local governments when exercising their power of eminent domain

## **CREDENTIALS**

### **EDUCATION**

Wake Forest University School of Law, J.D., 1986

Virginia Polytechnic Institute and State University, B.S., 1982

### **NOTABLE ACCOMPLISHMENTS**

Ranked among Super Lawyers magazine's North Carolina "Super Lawyers," (Business Litigation) 2006 – 2015, and 2018

Recognized in The Best Lawyers in America® (Business Litigation) 2003 – 2004, (Commercial Litigation) 2006 – 2013, 2015-2017, 2021, and 2023, (Bet-the-Company Litigation) 2010-2017, 2021, and 2023, (Municipal Litigation) 2012-2017, 2021, and 2023, and (Real Estate Litigation) 2012 -2017, 2021, and 2023

Named as Best Lawyers' 2015 and 2017 Raleigh Litigation – Real Estate Lawyer of the Year

Recognized in Business North Carolina Magazine's "Legal Elite," (Litigation), 2008, 2023

### **PROFESSIONAL & COMMUNITY ACTIVITIES**

American Board of Trial Advocates, Eastern North Carolina Chapter, Member since 2008, President – 2017, Secretary & Treasurer, 2015

Wilson Family YMCA Board of Directors, President, 2015

Eastern North Carolina Inn Court, President, 2005 – 2006, Charter Member

North Carolina Association of Defense Attorneys, President, 2004, Executive Vice President, 2002, Board of Directors, 1998 – 2001

North Carolina Bar Association, Co-Chair, Tort Reform Task Force, 2005, Board of Governors, 2001 – 2004, Chair, Litigation Section, 1999 – 2000, Chairman, Public Information Committee, 1997 – 1998, Chairman, Local Bar Services Committee, 1994 – 1995

North Carolina General Assembly, Civil Litigation Study Commission, Co-Chair, 2000